

REMARKS/ARGUMENTS:

This amendment replaces the non-compliant amendment filed on December 4, 2003.

Claims 1-13, 15-18, 20-32 and 34-35 are pending in the present application. Claims 1-13, 15-18, 20-32 and 34-35 stand rejected. Claims 13, 15-18, 20-32 and 34-35 are herein canceled without prejudice.

The above-identified patent application has been amended and Applicants respectfully request the Examiner to reconsider and again examine the claims as amended.

The Examiner rejected claims 1-13, 15-18, 20-23, 27, 31 and 34 under 35 U.S.C. §103(a) as being anticipated by U.S. Patent No. 6,466,120 to Dantressangle (hereinafter Dantressangle) in view of U.S. Patent No. 6,510,402 to Logan et al. (hereinafter Logan). Independent claims 1 and 7 recite in part "... the test engine comprising a computer server having at least one *software implementation of a processor* executing at least one instance of the client test code." (emphasis added). As described in detail in the specification at page 15, line 20 through page 16, line 4 a "software implementation of a processor" (an example Java Virtual Machine software implementation of a processor is described), each software implementation of a processor acts as an interface between compiled code and the microprocessor. Further, each software implementation of a processor has a respective socket to the application server therefore the use of a software implementation of a processor accurately emulates a large user load on the application server and on the software components.

In contrast to independent claims 1 and 7, neither Dantressangle nor Logan, taken alone or in combination, describe or suggest the use of a software implementation of a processor and the benefits associated with such an arrangement. Accordingly, since claims 1 and 7 recite a software implementation of a processor while neither of Dantressangle nor Logan disclose or suggest the use of a software implementation of a processor, claims 1 and 7 are believed

patentable over Dantressangle and Logan. Claims 2-6 and 8-12 depend from claims 1 or 7 and are believed allowable as they depend from a base claim which is believed allowable. Claims 13, 15-18, 20-23, 27, 31 and 34 have been canceled without prejudice. Accordingly, the rejection of claims 1-13, 15-18, 20-23, 27, 31 and 34 under 35 U.S.C. §103(a) as being anticipated by Dantressangle in view of Logan is believed to have been overcome.

The Examiner rejected claims 24-26 and 28-30 under 35 U.S.C. §103(a) as being anticipated by Dantressangle in view of Logan and further in view of U.S. Patent No. 6,401, 220 to Grey et al. (hereinafter Grey). The Examiner also rejected claims 32 and 35 under 35 U.S.C. §103(a) as being unpatentable over Dantressangle in view of Logan and further in view of U.S. Patent No. 6,237,135 to Timbol (hereinafter Timbol). Claims 24-26, 28-30, 32 and 35 are herein canceled without prejudice. Accordingly, the rejection of claims 24-26 and 28-30 as being anticipated by Dantressangle in view of Logan and further in view of Grey and the rejection of claims 32 and 35 as being unpatentable over Dantressangle in view of Logan and further in view of Timbol is believed to have been rendered moot.

In view of the above, claims 1-12 are believed allowable and reconsideration and allowance thereof is respectfully requested. The Examiner is respectfully invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

Appl. No. 09/548,203
Reply to Office Action of September 4, 2003

Docket No. EMPIR-019PUS

The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845.

Respectfully submitted,

Dated: 15-Jan-04

DALY, CROWLEY & MOFFORD, LLP

By: David W. Rouille
David W. Rouille
Reg. No. 40,150
Attorney for Applicant(s)
275 Turnpike Street, Suite 101
Canton, MA 02021-2354
Tel.: (781) 401-9988, ext. 25
Fax: (781) 401-9966